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PAAB

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 2015-030-00474R

Parcel No. 03-29-477-010

Carolyn Morse, Trustee, et al.,

Appellant,

vs.

Dickinson County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on July 15, 2016. Michael Morse represented Carolyn Morse, Trustee, et al. Assistant County Attorney Lonnie Saunders represented the Dickinson County Board of Review. The Board of Review did not participate at the hearing, but submitted evidence and arguments in support of its position.

Carolyn Morse, Trustee, et al. is the owner of a residential, two-story home located at 13888 240th Avenue, Orleans, Iowa. Built in 1915, it has 2748 square feet of above-grade finish; a partial basement; a patio; and a two-car detached garage. The site is 0.884 acres. The site is 350 feet deep and has 110 feet of lakefront on the southwest shore of Big Spirit Lake. (Ex. A).

The property's January 1, 2015, assessment was $705,600, allocated as $632,200 in land value, and $73,400 in improvement value. Morse's protest to the Board of Review claimed the assessment was not equitable as compared with assessments of other like property and that the property was assessed for more than the value authorized by law under Iowa Code sections 441.37(1)(a)(1)(a-b). The Board of Review denied the petition. Morse then appealed to PAAB.

Michael Morse testified on behalf of Carolyn Morse, Trustee, et al. (collectively referred to hereinafter as Morse). Morse asserts the correct valuation method of the

subject site should be on a square-foot basis rather than a front-foot basis, and as such, he believes his property is inequitably assessed and over assessed. He based his position on a 2011 PAAB decision, which resulted in a reduction of Morse's assessment to $662,390. (Ex. 1). Morse is critical of the Assessor's Office for removing the adjustment made by PAAB; effectively asserting this should remain in perpetuity and any future adjustments to the property's assessment should be based only on the market.

In both the 2011 appeal and this 2015 appeal, Morse claimed that larger lots with greater depth were assessed too high for excess land. Morse believes the land's assessed value is incorrectly based on a linear front-foot valuation. He believes there should be a diminishing rate for linear front footage as well as depth of the lot. Morse additionally believes there is a bias in the assessments against absentee property owners.

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. §§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market

value essentially is defined as the value established in an arm's-length sale of the property. *Id*. Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id*. If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2).

Moreover, the Iowa Courts have concluded the "ultimate issue . . . [is] whether the *total values* affixed by the assessment roll were excessive or inequitable." *Deere Manufacturing Co. v. Zeiner*, 78 N.W.2d 527, 530 (Iowa 1956) (emphasis added). See also *White v. Bd. of Review of Polk County*, 244 N.W.2d 765 (Iowa 1976). Thus, while Morse's arguments focus on the subject's land value as determined by the Assessor, our analysis of Morse's claims concentrates on the subject's total value.

Property is to be assessed for taxation each year and the assessment is to reflect the value of the real estate as of January 1 of the year of assessment. § 428.4. Iowa Courts have said "previous decrees have no preclusive effect on subsequent tax assessments . . . [A] judicial decision on one year's tax is not res judicata for subsequent years because each tax year is an individual assessment which does not grow out of the same transaction." *Colvin v. Story County Bd. of Review*, 653 N.W.2d 345, 348 (Iowa 2002). Nevertheless, "in the absence of a showing of a change in value, it is presumed that a valuation fixed by the court continues to be the true value of the property in subsequent years." *Cott v. Bd. of Review of City of Ames*, 442 N.W.2d 78, 81 (Iowa 1989) (citations omitted).

Morse relies on a 2011 Order from PAAB that modified its assessment to justify its claims on appeal in this case. That Order, based on the evidence available in that record, factually found that the Trust's land was over assessed based on comparison of some sales in the area and a letter from a Realtor. Morse continues to assert there is a diminishing return on excess front footage and lot depth, as PAAB previously noted may be the case in its 2011 Order.

Pursuant to section 428.4, it was the Assessor's duty to ascertain the market value and subsequent assessed value of the subject property. In this case, the reassessment took place four years after PAAB's previous Order. Temporal distance

creates the possibility that the rationale and conclusion of PAAB's 2011 Order may no longer hold.

Furthermore, we note that Morse's requested relief would actually set the subject's assessment below that ordered by PAAB in its 2011 decision. Morse's appeal to PAAB requests a valuation between $568,400 and $636,305. (Ex. 49B). Far from advancing the continued application of the 2011 PAAB Order, Morse's requested relief indicates a desire to depart from PAAB's prior Order. Such a departure may or may not be justified based on the evidence presented, which we now analyze in conjunction with applicable assessment law.

A. Overassessment Claim

i. Applicable Law

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

ii. Findings of Fact

In support of his overassessment claim, Morse provided property sales from 2014 to 2016 on Big Spirit Lake. (Ex. 43A). Morse believes these sales demonstrate his property's land assessment is excessive. Of these sales, two are potentially reflective of area land values – 24750 140th Street and 24250 140th Street. Morse testified they were purchased with the intent of removing the existing improvements and rebuilding a new dwelling. The sale of 24750 140th Street indicates a land value of $7068 per-front-foot of lakeshore and $42.07 per-square-foot. The sale of 24250 140th Street indicates a land value of $6611 per-front-foot and $47.02 per-square-foot. In comparison, Morse's calculations show that the subject's land is assessed at $5747 per-front-foot and $16.42 per-square-foot. The land sales do not support Morse's overassessment claim. In fact, these sales appear to support the $5000 per-front-foot value applied by the Assessor.

We do not give any further consideration to the remaining sales as it pertains to Morse's overassessment claim because they were not adjusted to account for differences with the subject.

Morse also testified regarding a neighbor's property located at 13870 240th Street that is currently for sale. (Ex. 7 & 45). It has 90 feet of lakefront, is 370 feet deep, and has a lot size of roughly 58,000 square-feet. (Ex. 45). The site contains a 1 ½ story frame dwelling with approximately 2200 square feet of above grade living area built in 1920 and listed in below normal condition. (Ex. B). The dwelling has three bedrooms, two bathrooms. The property also has a 660 square-foot detached garage and a boathouse.

This property was listed in April 2015 for $648,000. Morse stated this price has recently been reduced to $588,000, which he notes is below its assessed value. No adjustments were made between this property and the subject. Because this is a listing and is not adjusted, we give it no consideration.

Morse also submitted an e-mail written by Eric Hoien of Hoien Realty. (Ex. 44). We do not find it necessary to recite Hoien's e-mail, because it provides only generalities about the Big Spirit Lake market and does not provide any opinion of value for the subject property. We give it no consideration.

Morse provided a Competitive Market Analysis (CMA) prepared by Mike Schrunk of Dowden-Hinn Realtors. (Ex 2). Schrunk determined an opinion of value of $636,305, as of November 2015. The CMA includes three sales, with two that occurred in September and October 2015, after the assessment date at-issue. They were unadjusted for the later date of sale and there was no explanation indicating whether one was necessary.

Schrunk adjusted the sales, but there is no explanation for them and they do not appear to be developed using typical appraisal methodology. For example, all of the sales were adjusted downward for the improvements' size, but the adjustments were made using different "costs per-square-foot" for each sale. There is no explanation of how the adjustment was determined or why each property required a different adjustment. Sale 2 had an adjustment of over $240,000 for this element, which is a

31.5% line adjustment; as such, we question the comparability of this property to the subject. Additionally, this sale has an indoor continuous flow pool, which was given no consideration in the CMA. Furthermore, the sites received significant size adjustments, but again there is no explanation for how they were determined.

Schrunk's range of value was between roughly $535,000 and $750,000. He reconciled to the average adjusted value and provided no explanation for this conclusion. Given all of these issues in the CMA, we conclude it is not a reliable indicator of value for the subject property as of the assessment date.

iii. Analysis

Morse argues that the Assessor should have incorporated a non-linear methodology when setting the subject's land value. In essence, Morse argues for the application of the concept of diminishing marginal returns to site valuation. He believes the subject property is over-assessed because the Assessor applied a linear valuation method to the subject's site valuation.

We have previously recognized that, all else being equal, the price per-square-foot of a property will decrease as the property's size increases. This is essentially the concept Morse espouses. Acknowledging the theoretical basis of Morse's concern about the land valuation, however, does not prove the subject's land assessment is incorrect. Notably, Morse does not identify the rate of diminishment. Aside from asserting the land valuation is incorrect, he has not offered his own opinion of the correct value based on recognized appraisal methodology. Furthermore, the evidence indicates that Morse's land assessment is below the value shown by land sales on both a front foot and square foot basis and does not support his overassessment claim.

Furthermore, our primary concern is with the subject's total valuation. Accordingly, we direct our attention to the evidence relating to the subject's total fair market value.

Morse submitted a list of sales in support of an over assessment claim. None of the sales were adjusted to determine an opinion of market value for the subject property. Although Morse submitted a CMA for the property, its effective date was

nearly one year after the assessment date at-issue and we are not convinced the sales selected are truly comparable to the subject property. Moreover, we find the CMA lacks support for or explanation of the adjustments made to the sales. Based on our examination of the CMA, we do not find it a reliable indicator of the fair market value of the subject as of January 1, 2015.

Lastly, Morse testified to his opinion that topographical conditions of the property and an easement require a reduction in the subject's assessment. Aside from this assertion, however, Morse provided no evidence of the actual impact, if any, of these issues on the subject's fair market value.

Based on the foregoing, we find that Morse has not met his burden of demonstrating the property is overassessed.

B. Inequity Claim

i. Applicable Law

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 257 Iowa 575, 133 N.W.2d 709 (Iowa 1965). The six criteria include evidence showing

> "(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination." *Id*. at 711.

The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id*. The *Maxwell* test may have limited applicability now that current Iowa law requires assessments to be at one hundred

percent of market value. § 441.21(1). Nevertheless, in some rare instances, the test may be satisfied.

ii. Findings of Fact

Morse compared the change in land assessments between the subject and neighboring properties from 2013 to 2015. (Ex. 43B). His chart shows the subject's land assessment increased by 19.04% from 2013 to 2015, with other properties owned by absentee owners receiving increases above 16%. In contrast, the non-absentee owners had land assessment increases of approximately 1%. He asserts this demonstrates the Assessor is targeting properties owned by absentee owners for larger land assessment increases and he is thereby being treated inequitably.

We note that a comparison of the subject with the two largest sites (13870 and 13900 240th Ave), which are the most comparable to the subject, indicates that the land assessments are equitable. Morse's calculations show that the subject's land is assessed at $5747 per-front-foot and $16.42 per-square-foot. 13870 240th is assessed at $5795 per-front-foot and $15.66 per-square-foot. 13900 240th is assessed at $5739 per-front-foot and $16.25 per-square-foot. Despite the assertion of targeting, this data indicates the subject is equitably assessed.

He also compared his site to twelve other properties that sold between 2014 and 2016. (Ex. 43A). Morse's comparables show a range of land assessments from $4369 to $5921 per-front-foot. On a per-square-foot basis, the comparables show a range from $15.04 to $39.46. Morse's land assessment falls within both of these ranges and does not support Morse's inequity claim.

The Board of Review's position is that lakeshore sites are not sold by the square-foot, but rather on a front-foot basis. Therefore, any analysis based on a square-foot basis is irrelevant. (Response). The Board of Review notes that the subject property is equitably assessed compared to the neighboring properties Morse submitted. (Exs. B, C, & D). The subject and the comparable properties are uniformly assessed at $5000 per-front-foot, with appropriate map and depth factors applied; and the property record cards for these properties support the Board of Review's assertion. (Exs. B-E, O).

While the Assessor applied a $6000 per-front-foot value to lakeshore properties on 140th Street (Ex. G-I), we understand those properties to have sand beaches fronting the lake that would enhance the site value compared to the subject.

Typically the *Maxwell* equity analysis is done by comparing prior year sales (2014) to the current assessment (2015). Exhibit 43A contained three sales that occurred in 2014 that can be used for an equity analysis. Of these sales, one was a multi-parcel transaction, and therefore is not comparable to the subject property. (Exs. 17-23).

Of the remaining two 2014 sales, the property located at 24250 140th Street, Orleans, sold in December 2014 for $443,000 and was assessed in 2015 for $459,200. It has an assessment/sales ratio of 1.04, which indicates its assessment was just slightly higher than the sale price. (Exs. 39 & 40). Morse indicates this property was essentially purchased for the land and the existing improvements were removed by the purchaser. Considering only the sale price and not including any cost to raze the existing improvements or ready the lot for development, this property sold for roughly $6600 per-front-foot and $47 per-square-foot. Thus, neither the sales price per-front-foot nor the sales price per-square-foot supports Morse's claims.

The property located at 24132 140th Street sold in June 2014 for $937,500, had a 2015 assessment of $821,700, which results in an assessment/sales ratio of 0.88. (Exs. 12 & 13). This ratio indicates its assessment is 12% less than market value.

iii. Analysis

First of all, we find that Morse has not shown the Assessor applied an assessing method in a non-uniform manner. To the contrary, the Board of Review's evidence indicates the Assessor applied a consistent value of $5000 per-front-foot to the subject and comparable properties and then applied adjustments to the land value based on the property's depth and location.

Furthermore, Morse's evidence indicates the subject's land assessment is equitable. Morse's comparables show land assessments per-front-foot ranging from $4369 to $5921 and Morse's property is within the range at $5747. On an assessment

per-square-foot basis, the comparables show a range from $15.04 to $39.46. At $16.42, Morse's property is at the low end of the range.

As previously discussed, we found that Morse has not shown the subject property's actual fair market value and therefore the *Maxwell* equity analysis cannot be fully completed. Importantly, Morse has made no attempt to show the subject's total value, encompassing land and improvements, is inequitably assessed with any comparable properties. For these reasons, we find Morse has failed to show the subject property is inequitably assessed.

Order

Having concluded that Morse has not shown his property is inequitably or overassessed, PAAB ORDERS that the Dickinson County Board of Review's action is affirmed.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.

Karen Oberman, Presiding Officer

Stewart Iverson, Board Chair

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